

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CESARIO GUILLEN	§	
v.	§	CIVIL ACTION NO. 6:08cv168 (Crim. No. 6:07cr7)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Cesario Guillen, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Guillen was convicted on his plea of guilty of possession with intent to distribute or dispense controlled substances. He signed a plea agreement which included a waiver of appeal, but filed a Section 2255 motion to vacate or correct his sentence. The Government filed an answer saying that all of Guillen's claims are barred by the waiver of appeal provision, to which Guillen filed a response.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to vacate or correct sentence be denied based on the waiver of appeal. The Magistrate Judge also concluded that Guillen had not received ineffective assistance of counsel, that the Government had not breached the plea agreement, and that Guillen's allegations concerning recent amendments to the U.S. Sentencing Guidelines were not cognizable under Section 2255. Finally, the Magistrate Judge recommended that Guillen be denied a certificate of appealability *sua sponte*.

A copy of the Magistrate Judge's Report was sent to Guillen at his last known address, return receipt requested, but no objections have been received; accordingly, Guillen is barred from *de novo*

review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly


ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that the Movant Cesario Guillen is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 26th day of February, 2009.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE